Editor's note: Reconsideration denied -- Order April 20, 1992

RUSSELL A. BEAVER
J. F. BEAVER

IBLA 89-542, 90-451 Decided December 26, 1991

Appeals from decisions of the Yuma District Office, Bureau of Land Management, setting new rental for agricultural lease CAAZCA-22525.

IBLA 89-542 dismissed; IBLA 90-451 affirmed.

1. Appraisals--Federal Land Policy and Management Act of 1976: Leases

   Sec. 302(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(b) (1988), authorizes the Secretary to lease public lands for various uses including agriculture. 43 CFR 2920.0-6(a) requires that land use authorizations be issued only at fair market value. An appraisal of fair market rental value for an agricultural lease will be affirmed on appeal where an appellant fails to show error in the appraisal methods used or fails to show by convincing evidence that the charge is excessive. In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal.

APPEARANCES: David E. Lindgren, Esq., Sacramento, California, for appellants; Robert Moeller, Esq., Office of the Field Solicitor, U.S. Depart-ment of the Interior, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Russell A. Beaver and J. F. Beaver (appellants) have appealed from decisions of the Yuma District Office, Arizona, Bureau of Land Management (BLM), establishing new annual rental for, and approving agricultural lease CAAZCA-22525, embracing approximately 860 acres along the Colorado River in T. 9 S., R. 22 E., San Bernardino Meridian, Imperial County, California.

Background

The above-described lands were withdrawn on July 2, 1902, and February 19, 1929, under first and second form reclamation withdrawals

pursuant to the Reclamation Act of June 17, 1902, 32 Stat. 388 (1902) (Appellants Exh. 12). 1/ Sometime in 1955, appellants purchased the lands from a private party and began using, occupying, and improving them. On or about August 3, 1971, the United States filed an action in ejectment against appellants in the United States District Court. This action culminated in a May 1974 Judgment and Stipulation finding title to the lands to be in the United States, and approving a lease therefor to appellants. Accordingly, on April 19, 1974, BLM issued to appellants lease Y-0122C embracing the above described lands. That lease was issued pursuant to the terms of the Reclamation Act of 1902, supra, for agricultural purposes and provided for annual rental charges of $5,000 and an expiration date of July 29, 1989.

By letter of February 23, 1989, BLM's Yuma Area Manager notified appellants that, as a result of an appraisal, fair market annual rental of $89,440 had been established for a new lease to be effective July 30, 1989. With the letter, the Area Manager sent copies of that lease (CAAZCA-22525) for execution by appellants. The new lease cited section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732 (1988), as authority for its issuance.

On May 26, 1989, BLM issued to appellants a decision styled "Lease Offered; New Rental Established." This decision stated in part: "Having received no reply to our February 23 letter, we assume you have no problems with the new lease enclosed with that letter." The decision requested appellants to remit $37,267 (rental for 5 months, from July 30 through December 31, 1989), as a condition to BLM's approval of the lease. BLM enclosed further copies of the lease and advised appellants of their right to appeal to this Board pursuant to the regulations at 43 CFR 4.400.

By letter of June 1, filed with BLM on June 7, 1989, counsel for appellants at that time replied to BLM's May 26 decision in pertinent part as follows: "We are in the process of considering the lease offered to the Beaver Brothers by the Bureau. Consequently, the Beavers are not presently ready to sign the lease, but they wish to reserve their position with regard to the offered lease."

On June 14, 1989, the Acting District Manager wrote to appellants acknowledging the June 1 letter and advising that if the signed lease and a rental payment of $37,267 were not received by July 29, 1989, appellants would be considered in trespass.

On July 7, 1989, appellants filed with BLM a statement challenging the annual rental and appraisal. BLM treated this document as a notice of appeal and forwarded the case file to the Board. By letter of July 11, 1989, the Acting District Manager advised appellants that while the case was before this Board BLM had "no jurisdiction and can take no action."

1/ Appellants' exhibits are attached to a pleading entitled "Protective Motion for Augmentation of Administrative Record," filed with the Board on Aug. 7, 1990.

This appeal was subsequently docketed as IBLA 89-542. On August 21, 1989, BLM filed a motion to dismiss the appeal as not timely filed. Appellants filed an opposition to this motion on January 24, 1990.

Counsel for appellants and the Office of the Field Solicitor continued to negotiate regarding the lease. 2/ On May 2, 1990, BLM issued another decision offering a modified lease and requesting rental. This decision states in part: "Negotiation discussions involving the Bureau of Land Management (BLM), the Field Solicitor's Office in Phoenix, Arizona (BLM's attorneys), and the Beavers' legal representatives have resulted [in] an agreement to modify certain terms and conditions of the lease originally offered to the Beavers on February 23, 1989." The decision requested appellants to execute the lease as modified within 30 days of its receipt and remit a payment of "$24,725 (representing the minimum agreed rental value for the period from July 30, 1989, through December 31, 1989)." Counsel for appellants received the decision on May 4, 1990. This decision was not appealed.

On June 26, 1990, BLM issued a third decision. This decision noted that the old lease (Y-0122C) had expired on July 29, 1989, and that a new lease had been offered on February 23, and "May 26, 1989." 3/ The deci-sion stated that the new lease (CAAZCA-22525), as negotiated between the Solicitor's Office and counsel for appellants, was signed by appellants on May 30, 1990, and approved by BLM on June 8, 1990. The decision indicated that a partial rental payment had been remitted and established a payment schedule for further payments. It also stated that appeal rights were addressed in section 2 of the lease. Section 2A of the lease provides:

> Lessor and Lessee acknowledge that, as of the date of execution of this Lease, a dispute exists as to the proper method for determining the fair market rental value of the leased lands. As of such date an appeal raising this issue is pending before the Interior Board of Land Appeals (IBLA), being Case No. 890542 (CAAZCA-22525), in which Lessor has filed a motion to dismiss and to which Lessee has responded. Lessor and Lessee herein agree that within thirty (30) days of execution by both parties to this Lease agreement, Lessee shall file a second notice of appeal regarding this rental dispute pursuant to 43 CFR part 4.400. Within said 30 day period Lessor and Lessee, through their respective counsel, shall file a stipulation with the IBLA dismissing the appeal in Case No. 89-542 conditioned on acceptance by IBLA of jurisdiction over the second appeal referred to above. If IBLA shall fail to accept jurisdiction over the second appeal, then the parties shall proceed with the appeal in Case No. 89-542.

2/ See letters dated Dec. 5, 1989, and Mar. 22, 1990, from counsel for appellants to the Office of the Field Solicitor.

3/ This is apparently an incorrect reference to the May 2, 1990, decision.

> In either event, it is the intention of the Lessor and Lessee to submit this dispute to IBLA for resolution, and Lessor herein agrees to raise no jurisdictional defenses to the hearing of any such appeal by the IBLA.

On July 9, 1990, appellants filed a notice of appeal of BLM's June 26, decision. This appeal was docketed as IBLA 90-451. On July 10, 1990, the parties filed with the Board a stipulation formulated according to the text of section 2A of the lease**,** supra. On August 3, 1990, appellants filed a statement of reasons (SOR) challenging BLM's appraisal. BLM filed an answer on March 8, 1991.

Procedural Issues

There can be no question that BLM's May 26, 1989, decision adversely affected appellants. 4/ It presented a new lease for execution and required a greatly increased annual rental. In their June 1, 1989, reply to that decision, appellants stated they were not ready to sign the lease and wished to preserve their rights. Appellants contend that the June 1 letter constituted a notice of appeal of the May 26 decision because it informed BLM that they "were not accepting the lease and were reserving all rights respecting it" (SOR at 4).

This Board has stated that where the effect of a submission is to challenge either the conclusion or the factual predicates of an adverse decision, it should be treated as an appeal. James C. Mackey, 96 IBLA 356, 362, 94 I.D. 132, 136 (1987); Buck Wilson, 89 IBLA 143, 145 (1985). In this case, the June 1 letter clearly was not a notice of appeal. The letter was from appellants' counsel at that time and it stated "[w]e are in the process of considering the lease offered to the Beaver Brothers by the Bureau. Consequently, the Beavers are not presently ready to sign the lease, but they wish to reserve their position with regard to the offered lease." The letter neither challenged the conclusion of the decision nor the factual predicates thereof. Certainly, it did not, as represented in

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4/ Counsel for BLM states in its answer filed in IBLA 90-451 at page 2 that BLM "officials erroneously notified appellants of their right to appeal offer of lease in the [May 26, 1989] letter transmitting the form of the lease." That statement is incorrect. BLM properly granted the right of appeal in that decision. Counsel assumes that a disagreement concerning rent would prevent the formation of a lease agreement. He asserts that a lessee could not agree to a lease (including the rental term) and then challenge the agreed upon amount as being unreasonable. That is not the case. Clearly, appellants could have conditionally agreed to the lease by signing it and paying the new rental amount under protest and at the same time filed an appeal disputing the amount of the rental. In that way appellants would signal their agreement to the new lease, subject to the rental challenge. However, if their challenge were unsuccessful they would be bound by the rental terms.

the SOR in this case, inform BLM that appellants "were not accepting the lease." The letter merely constituted notice that appellants, in consultation with their attorney, were in the process of determining whether or not to accept BLM's offer of a new lease.

It was not until July 7, 1989, that appellants filed with BLM a document actually challenging the appraisal and annual rental. BLM considered this document as the filing of an appeal and transmitted the case file to this Board on July 13, 1989. Thereafter, BLM filed a motion to dismiss the appeal as untimely filed. BLM asserted that the May 26 decision was received on May 30; that the appeal period expired on June 29; and that the notice of appeal was transmitted on July 6 and received July 7 and thus did not fall within the grace period for filing as set forth in 43 CFR 4.401(a). BLM's motion is well taken. The timely filing of a notice of appeal is jurisdictional and failure to file a notice of appeal within the time allowed requires dismissal of the appeal. Gary T. Suhrie, 75 IBLA 9 (1983). Accordingly, IBLA 89-542 must be dismissed.

Since the Board never had jurisdiction over the subject matter involved in the appeal in IBLA 89-542, BLM was not precluded from taking further dispositve action regarding the new lease. Thus, the dispute concerning the rental for the new lease is properly before the Board in the appeal from BLM's June 26, 1990, decision, docketed as IBLA 90-451.

Lease Rental

BLM's appraisal, approved December 14, 1988, established fair market rental at $89,440 ($104 per acre/year) for lease CAAZCA-22525. BLM's appraiser considered the highest and best use of the property as agricultural. He arrived at his valuation after a review and inspection of 13 comparable leases based on soils, irrigation, improvements, topography, location, and access. These 13 comparables ranged in rental value from $125-$140 per acre/year. The appraisal states at page 27:

> The lease value of the subject parcel falls within this range although consideration was given to the field elevation differences, the irregular shaped fields, and its location at the south end of the Palo Verde Irrigation District. However, based upon an analysis of the comparable leases, no market trends in respect to these considerations were discovered to warrant a significant reduction from this range in the appraised rental value. Therefore it is my opinion that the subject parcel would rent for $115 per acre/year on the open market. Questions about compensation from the landowner for future improvements is a management issue that is not evaluated within the realm of an appraisal.
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> In most lessor-lessee relationships the lessee pays for the cost of the water toll ($33 per acre/year with Palo Verde Irrigation District). However, the lessor will generally pay a fee to the Irrigation District for the water standby charges. Since

> the U.S. Government cannot pay these particular bills and ultimately this burden falls on the lessee, these charges were considered and a deduction was made to the appraised rental value ($5.50 per acre/year). Also the approximate $5.50 per acre/year possessory interest tax that is paid by the lessee to Imperial County was also subtracted from the appraised rental since the lessor should normally assume these charges also. The above cited figures were supplied to the appraiser by the Palo Verde Irrigation District and the Imperial County Assessor's Office.
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> After a thorough on-the-ground inspection and analysis of the thirteen comparable leases and the subject parcel, giving full consideration to all of the aforementioned characteristics, it is my opinion that the subject 860 acres has a fair market rental value of $104 per acre/year, or $89,440, as of November 22, 1988.

As improvements on the parcel, the appraiser noted that the land was leveled and that dirt access roads and concrete and earthen irrigation ditches were constructed. The appraisal states at page 22: "As for the subject parcel, the leveled land and ditches are part of the real estate and no credit will be given to the tenant, as this cost to the tenant was amortized out and subsidized by a very low rental for over 20 years." Appellants disagree that their investments have been amortized and that their first lease constituted a subsidy (SOR at 8). However, no further facts or argument have been submitted to amplify these points.

Rather, appellants argue that the appraiser erred in considering the value of improvements made by themselves in his determination of fair market value. Appellants cite section 203(d) of FLPMA, 43 U.S.C. § 1713(d) (1988), which provides that "sales of public lands shall be made at a price not less than their fair market value as determined by the Secretary." Appellants urge that fair market value may not include the value of improvements placed by others. Appellants cite 43 CFR 2710.0-6(f) which provides:

> Sales under this part shall not be made at less than fair market value. Such value is to be determined by an appraisal performed by a Federal or independent appraiser, as determined by the authorized officer, using the principles contained in the Uniform Appraisal Standards for Federal Land Acquisitions. The value of authorized improvements owned by anyone other than the United States upon lands being sold shall not be included in the determination of fair market value. Technical review and approval for conformance with appraisal standards shall be conducted by the authorized officer.

Appellants point out that various departmental regulations (among them the grazing regulations and Bureau of Indian Affairs (BIA) leasing regulations)

embody the policy that privately owned improvements are not to be included in property value determinations. Appellants cite American Telephone & Telegraph Co., 25 IBLA 341 (1976), and Benton C. Cavin, 83 IBLA 107 (1984), in support of their position that fair market value on renewal of a lease should not include the value of improvements added by the lessees themselves. Appellants contend that the lease should be reappraised as raw land and the rental reduced accordingly.

BLM asserts that under paragraph 12(d) of the expired lease (Y-0122C), the improvements are owned by the Government and not by appellants. Paragraph 12(d) of the lease provides in pertinent part:

> Upon the expiration or other termination of this lease, Lessee shall have the right during the succeeding thirty (30) days * * * to remove improvements installed or constructed on said land by the Lessee provided that any improvements not so removed by lessee shall upon the expiration of such period become the property of the United States or at the option of the United States may be removed by it at the cost and expense of the Lessee. Lessee shall promptly reimburse the United States for such cost and expense incurred in such removal upon billing therefore. [5/]

BLM also cites 43 CFR 2920.0-6 which provides that land use authorizations shall be issued only at fair market value. BLM points out that appellants did not renew a lease, but that the old lease expired and a new lease was offered. BLM asserts that appellants stand in the shoes of any other citizen applying for the leased premises and cannot be granted a rental preference simply because they previously leased those premises.

BLM asserts that the grazing and BIA leasing regulations relied on by appellants deal with the ascertainment of rent or charges during the term of permit or lease during which improvements were placed, not with the question of whether improvements placed during a previous, expired lease should be included in setting the value of a new lease.

[1] Generally, appraisals will not be set aside on appeal unless an appellant is able to show error in the appraisal method used by BLM or demonstrate by convincing evidence that the charges are excessive. Southern Pacific Transportation Co., 116 IBLA 164 (1990); Gerald L. & Ruby A. Overstreet, 112 IBLA 211, 214 (1989); Lawrence Dupuis, 99 IBLA 174 (1978). In the absence of a preponderance of evidence that a BLM appraisal is erroneous, such an appraisal may be rebutted only by another appraisal. Big Sky Communications, Inc., 110 IBLA 213 (1989); Chalfont Communications, 108 IBLA 195, 196 (1989); Denver & Rio Grande Western Railroad Co., 101 IBLA 252, 254 (1988).

5/ A similar provision is included in section 6B of the new lease (CAAZCA-22525).

The situation in the case at hand is one in which the Department is granting an interest in public land to private citizens. For such a grant, the Department is required under section 302(b) of FLPMA, 43 U.S.C. § 1732(b) (1988), to obtain fair market value. 43 CFR 2920.0-6(a); Sierra Production Service, 118 IBLA 259 (1991). Fair market value is the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. 43 CFR 2710.0-6(f).

In American Telephone & Telegraph Co., 25 IBLA 341, 356-58 (1976), we held that the "before and after" rule was properly applied in determining the market value of public land used for a communications site. Under that test, applied to Federal land acquisitions

> just compensation is arrived at by first estimating the market value of the entire unit before the taking and then subtracting from it the market value of what remains in the owner after the taking. The difference is compensation including both value of land taken and any diminution of value in the remainder. [Footnote omitted.]

Uniform Appraisal Standards (UAS) adopted by the Interagency Land Acquisition Conference in 1973, at 24-25.

As the Board has come to recognize, the "before and after" test is not a method of determining "fair market value" but rather is a tool used in determining "just compensation." Since the purpose of just compensation is to make the owner whole, the before and after test simply evaluates the value of the land to the owner prior to the appropriation and after the appropriation. Any diminution in value is the amount by which the owner has been damaged by the taking and for which he is properly compensated. This figure is not, however, synonymous with the fair market value of an interest acquired where the Government leases public land to private citizens. See Northwest Pipeline Corp. (On Reconsideration), 83 IBLA 204, 217 (1984) (A.J. Burski, concurring).

In the case before us, appellants are not owners of lands being taken for a project by the Government through its power of eminent domain. Rather, they are holders of an agricultural lease, entered under the provisions of FLPMA. Therefore, there is no issue of just compensation and the "before and after" test is not relevant. Accordingly, American Telephone & Telegraph Co., supra, does not require a finding that the appraisal herein erroneously included improvements to the leasehold in its determination of fair market value.

The other case relied on by appellants, Benton C. Cavin, 83 IBLA 107 (1984), is also inapplicable. Cavin involved color-of-title applications under the Color of Title Act, 43 U.S.C. § 1068 (1988). In that case we held that the appraised market value of a parcel sought under the Act is properly adjusted to subtract the value of the applicant's improvements.

The purpose of the Color of Title Act is a remedial one; it is to empower the Secretary to issue patents to public lands in order to alleviate the hardship of claimants who occupied such lands in adverse possession and had improved, cultivated, or paid taxes on such lands. Under the Act, one of the prerequisites of qualifying for patent in certain circumstances is that valuable improvements have been placed on the land. The Act requires that the appraisal of lands subject to a color-of-title application "be exclusive of any value resulting from the development or improvement of the lands by the applicant." 43 U.S.C. § 1068(a) (1988).

Appellants herein are not claimants applying to purchase a parcel they have occupied in good faith adverse possession under the Color of Title Act. Appellants are lessees under FLPMA. That Act requires that the Government receive fair market value rental. The regulation cited by appellants, 43 FR 2710.0-6(f), does not support their position. It excepts from inclusion in market value the "value of authorized improvements owned by anyone other than the United States." As counsel for BLM points out, by the terms of lease Y-0122C improvements became the property of the Government when the lease expired. Consequently, appellants do not own the improvements, which are part of the fee estate and properly considered in any market value determination. An argument such as appellants' was rejected in Pacific Power & Light Co., 65 IBLA 50 (1982). In that case BLM leased to the appellant three parcels for power plant usage. Both parties submitted appraisals of vastly different valuation. BLM appraised the parcels as "agricultural" with "strong industrial development potential," and estimated a fair market rental of $36,170. Pacific Power appraised the parcels as "rural homesites but more likely stockgrazing," and estimated a fair market rental of $7,988.75. Id. at 51. Pacific Power contended that BLM impermissibly relied on improvements made by the company in determining a high-est and best use for industrial purposes. The Board responded to this argument:

> [W]e must observe that while the BLM appraisal lists the amenities, improvements, and enhancement appurtenant to appellant's site, the market value computation is unmistakably derived from the comparable sales data.
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> Appellant's site was long ago zoned for industrial use and the ponds, as adjuncts of the plant, are clearly an industrial use of the lands in question. The fact that the zoning makes the land available for further industrial use surely adds value. Moreover, the extent to which existing facilities make the lands reasonably suited for indistrual [sic] development is properly considered in valuation. The conclusion of appellant's appraiser that highest and best use would be grazing with possible rural homesites ignores these considerations as well as the comparable sales date in BLM's appraisal.
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> The crucial issue, in any event, is not so much that of highest and best use as that of the value of the land. Viewed in

> perspective, highest and best use is merely a tool to determine what is, in fact, a comparable sale. Inasmuch as two of BLM's three comparables were adjacent to the subject tracts, and it is not contended that the adjacent lands were in any way different from the land subject to the appraisal, the per acre value that they provide would seem to eliminate the need for any further analysis. [Footnote omitted).]

Id. at 53-54.

Similarly in the case before us, appellants' suggestion that the lease be appraised as raw land ignores the use to which the lease has been put and the comparable sales data in BLM's appraisal. In view of the fact that appellants used and have subleased the land for agricultural purposes, it would not only be inappropriate, but contrary to the Government's obligation to charge fair market value, to consider the value of the lease as raw land. See Exxon Corp., 106 IBLA 207, 211-12 (1988); section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1988); 43 CFR 2920.0-6(a).

In the alternative, appellants contend that the rental sought by BLM is excessive by $9,460. This argument is based on appellants' subleasing arrangements. One sublease for 160 acres at $5,000 annual rental was apparently entered into with Clarence Robinson in 1974 (Exh. 17). On December 1, 1985, appellants subleased 350 acres at an annual rental of $40,000 to Bob and Larry Hull. On December 1, 1986, appellants subleased the remaining 350 acres, also at an annual rental of $40,000, to Andy Van Sickle (Exh's 14 and 15; SOR at 13-14). The subleases to the Hull brothers and Andy Van Sickle were consolidated and used as Comparable Lease No. 2 in BLM's appraisal. The appraiser listed the land size as 860 acres and the lease terms as $125 per acre per year. Appellants contend that the subleases cover only 700 acres on a gross basis and 643 acres on a farmable basis, and that the "gross per acre rental for these subleases was $114" (SOR at 14). Appellants assert that the appraiser erroneously multiplied the farmable acre value by the gross acreage (as adjusted) to arrive at the $89,440 annual rental. Appellants assert that the appraiser should have used the $114 figure (as adjusted) multiplied by the gross acreage to yield an annual rental of $79,980 rather than $89,440.

BLM responds that the total acreage (860 acres) was in fact appraised as farmable. BLM asserts that ground evaluation and aerial photographs revealed that all except 30 acres were under cultivation at the time of the appraisal, and that the gross acreage was appraised as an economic unit. 6/

6/ The appraisal does not state the exact acreage under cultivation. It does state that approximately 10 acres are used to temporarily store equipment and stack hay, that the "property is planted into alfalfa and cotton," and "[a] small portion of the lands [is] also producing melons" (Appraisal at 11).

BLM submits that the appraiser should properly have listed the size of Comparable Lease No. 2 as 643 acres, rather than 860 acres. BLM argues, however, that since the remaining comparable leases ranged in size from 85 to 1,240 acres, the discrepancy was too minor to exclude Comparable Lease No. 2. BLM asserts that the appraiser's initial value of $125 per acre was not based on mistaking the rental paid by appellants' sublessees, but on a comparison of comparable leases. BLM asserts that its appraiser "was informed by sublessee Hull that he was paying appellant $125 per acre in rent," and that the appraiser clearly assumed Hull was paying this amount for 860 acres rather than a lesser acreage (Answer at 8). BLM contends that even excluding Comparable Lease No. 2, the appraisal shows that $125 per acre was an appropriate figure for analysis.

The most compelling indication of the correctness of BLM's appraisal is the rental charged by appellants of its sublessees. If appellants' sublessees paid appellants either $114 or $125 per acre/year then appellants' remuneration is clearly higher than the fair market value set by BLM's appraiser. While there appears to be some uncertainty concerning rental on the subleases, appellants have failed to show that the appraiser's valuation of Comparable Lease No. 2 was invalid. Whatever the sublease rentals were, BLM is not bound to accept them as fair market value where it undertakes to establish that value by the comparable lease method. In any event, even excluding Comparable Lease No. 2, the remaining comparables adequately support the market value established. Appellants have failed to show, by a preponderance of the evidence, that BLM's appraisal is in error. Nor have appellants submitted their own appraisal to rebut BLM's appraisal. Consequently, they have failed to meet their burden of proof.

To the extent not discussed herein, appellants' other arguments have been considered and rejected. Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the fair market rental value established by appraisal for lease CAAZCA-22525 is affirmed.

John H. Kelly
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge